

REMARKS/ARGUMENTS

Re-examination and favorable reconsideration in light of the above amendments and the following comments are respectfully requested.

Claims 9 - 16 are pending in the application. Currently, all claims stand rejected.

By the present amendment, claims 9 and 16 have been amended; and claims 13 - 15 have been cancelled without prejudice.

In the office action mailed March 17, 2009, claims 9 and 11 were rejected under 35 U.S.C. 102(b) as being anticipated by EP 0547978 to De Laforcade et al.; claim 10 was rejected under 35 U.S.C. 103(a) as being unpatentable over De Laforcade in view of U.S. Patent No. 5,573,127 to Takahashi et al.; claims 12 - 15 were rejected under 35 U.S.C. 103(a) as being unpatentable over De Laforcade in view of U.S. Patent No. 5,501,348 to Takeuchi; and claim 16 was rejected under 35 U.S.C. 103(a) as being unpatentable over De Laforcade in view of Taekuchi and U.S. Patent No. 4,067,782 to Vogel et al.

The foregoing rejections are traversed by the instant response.

As amended herein, independent claim 9 is directed to a device for opening-closing a container having a stopper arranged at an end and to which there is articulated a shut off flap equipped with a locking system and which collaborates in sealed closure with a hole formed at an upper part of the stopper or is made to open by flipping, said shut off flap comprising controlled opening means including an energy storing elastic member inserted between an upper part of the stopper and a lower part of the shut

off flap, and formed by two spring leaves that are elastically deformable, wherein the free parts of the spring leaves being secured to two arms, one of the respective ends of which is immobilized in mortises formed on the upper part of the stopper and each of the other ends of which is equipped with a lateral pivot able to fit in corresponding respective housings formed facing one another on the upper part of the stopper, in a region away from the region of the mortises, said arms being equipped with pivots being joined together by means for releasing the flap which comprises a frontal pressing region of an operating button secured to the pivots and extending downward at right angles to the arms on one side of the articulation formed by said pivots and extending towards an inside of the stopper, in a plane more or less parallel to the arms, on the other side of said articulation, by a lever able to perform lifting by rotation against an internal part of the free end of the shut off flap away from a hinge when pressure is exerted on the pressing region of the operating button, until such time as a pip is released from the hole.

Amended claim 9 describes an invention which is different in many ways from what is shown and described in EP Patent No. 0 547 978 to De Laforcade et al. In fact, the corresponding claim has been allowed in the corresponding European patent application.

As can be seen, claim 9 now calls for a controlled opening means which includes an energy storing elastic member inserted between an upper part of the stopper and a lower part of the shut off flap and formed by two spring leaves that are elastically deformable. Still further,

claim 9 calls for the free parts of the spring leaves being secured to two arms. It is submitted that the cited reference to De Laforcade et al. does not contain such features. The Examiner contends that the energy storing elastic member in De Laforcade et al. has two spring leaves 10 that are elastically deformable in one of their free parts and that the leaves are secured to two arms. However, there is no identification in the rejection of what constitutes the two arms. In making an anticipation rejection, it is incumbent upon the examiner to identify each and every element being relied upon to reject the claim. By not identifying each element by a reference numeral or by providing a sketch with the various parts identified on it, the Examiner has failed to show that all of the elements set forth in the claim can be found either expressly or inherently in De Laforcade et al. Thus, the rejection fails on this basis alone.

Still further, the Examiner has not identified by reference number, column and line number, and/or a sketch where in the reference there can be found a disclosure of (1) arms of which one of the respective ends is immobilized in mortises formed on the upper part of the stopper and each of the other ends of which is equipped with a lateral pivot able to fit in corresponding respective housings formed facing one another on the upper part of the stopper, in a region away from the region of the mortises, and (2) arms being equipped with pivots being joined together by means for releasing the flap which comprises a frontal pressing region of an operating button secured to the pivots and extending downward at right angles to the arms on one side of the articulation formed by said pivots and

extending towards an inside of the stopper, in a plane more or less parallel to the arms, on the other side of said articulation, by a lever able to perform lifting by rotation against an internal part of the free end of the shut off flap away from a hinge when pressure is exerted on the pressing region of the operating button, until such time as a pip is released from the hole. Applicants can not find these features in the embodiment of Figure 2 of De Laforcade et al. Should the Examiner decide to maintain this rejection, the Examiner is requested to clearly point out where each claimed feature can be found in Figure 2 so that the Examiner's position is understood.

For these reasons, the rejection of claim 9 on anticipation grounds should be withdrawn. Claim 11 is allowable for the same reasons as claim 9 as well as on its own accord.

Claims 10, 12, and 16 are allowable for the same reasons as claim 9 as well as on their own accord. The Takahashi et al., Takeuchi et al., and Vogel patents do not cure the aforementioned deficiencies of De Laforcade et al.

For the foregoing reasons, the instant application is believed to be in condition for allowance. Such allowance is respectfully solicited.

Should the Examiner believe an additional amendment is needed to place the case in condition for allowance, the Examiner is hereby invited to contact Applicants' attorney at the telephone number listed below.

No fee is believed to be due as a result of this response. Should the Director determine that a fee is due, he is hereby authorized to charge said fee to Deposit Account No. 02-0184.

Respectfully submitted,
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